



EMPLOYMENT TRIBUNALS

Claimant: Ms B Shiels

Respondents: 1. Governing Body of Ripon Grammar School
2. North Yorkshire County Council

JUDGMENT

The Claimant's application for the Judgment issued on 26 May 2022 to be reconsidered is refused.

REASONS

1. Under Rule 71 of the Tribunal's Rules of Procedure, an application for reconsideration must be presented in writing within 14 days of the date on which the written record of the decision was sent to the parties. The Hearing took place on 4 to 7 April 2022. A Reserved Judgment and Reasons were sent to the parties on 26 May 2022 and information about how to apply for a reconsideration, including the time limit for doing so, was included in a covering letter.
2. The Claimant wrote to the Tribunal on 31 July 2022 asking for advice on what she should do. She said that she had made a subject access request (SAR) to North Yorkshire County Council (the Council) which showed that the LADO referral form from Mrs Murray dated 9 October relating to Mrs Day that the Council held was differently worded from the version of that form that the Respondents had submitted in evidence at the Tribunal Hearing. The version of the form submitted by the Respondents in evidence says that the School received whistleblowing concerns about Mrs Day's conduct on 24 September 2020. It did not identify who had raised those concerns. The version disclosed as a result of the Claimant's SAR ("the SAR version") is heavily redacted but contains less detail in the box headed "Description of allegation or concern (please give as much information as possible including details of any injuries/harm and any witnesses to the incident and any action taken)". The SAR version does, however, identify "BS" (ie, the Claimant) as the member of duty staff involved and that she was the person who raised the whistleblowing concern. Both versions of the form are dated 9 October 2020.

3. In her email of 31 July the Claimant said that she believed that the form submitted in evidence had been altered by the Respondents to remove the reference to her as the source of information about Mrs Day. They did this to support their case that Mrs Day did not know that it was the Claimant who made allegations of negligence against her until after the Claimant's dismissal, and so had no reason to fabricate stories about the Claimant's conduct. She asked where she should take her concerns. The Tribunal replied on 3 August stating that it could not give advice. It asked her to clarify whether she wanted the Judgment to be reconsidered.
4. On 3 August the Claimant emailed to say that she would like the Judgment to be reconsidered and on 8 August she wrote again and set out the reasons why, namely, that new evidence had come to light that showed that Mrs Day and Mr Webb were lying in their evidence and that the LADO referral form submitted in evidence had been altered or forged in order to mislead the Tribunal. She believed that it was in the interests of justice for the evidence submitted by the Respondents to be re-examined.
5. All parties have confirmed that they are content for the Tribunal to consider the Claimant's application in writing without a Hearing.

Time limit

6. The deadline for an application for reconsideration expired on 9 June. The application was therefore around eight weeks outside the time limit. The Tribunal has a discretion under Rule 5 of its Rules of Procedure to extend time.
7. The Tribunal does not consider that it would be in the interests of justice to grant an extension of time for this application for reconsideration. Time limits for challenging Tribunals' decisions are important because they ensure that issues are dealt with without delay and there can be finality to the litigation. The Claimant confirmed in response to an enquiry from the Tribunal that she made her subject access request on 11 May and received the link to the data on 8 June and had a password to access it by 9 June. She did not contact the Tribunal for a further seven weeks. There was nothing to prevent the Claimant making a subject access request to the Council in advance of the Hearing. She did not make it until a month after the Hearing had ended. Even if it was only during the Hearing that she realised the significance of the content of the LADO referral form, it remains the case that she did not raise her concerns with the Tribunal for several weeks after she received access to the version that she now relies on in her application.
8. In written submissions she made on 15 September, the Claimant said that when she contacted her trade union solicitor after receiving the response to her subject access request, she was told that it was too late to apply for a reconsideration. She also said that an article in the Daily Mail on 14 June that

reported “vocabulary” used by Mr Webb in his witness statement and that was untrue and defamatory had caused a severe relapse in her mental health from which she was only just recovering. The Tribunal finds that explanation for her delay in making the application unconvincing. If her mental health was only just improving in mid-September, it is unclear how she was able to make a fairly detailed reconsideration application by the beginning of August.

Merits of the application

9. In any event, and more fundamentally, the Tribunal does not consider that refusing an extension of time causes any prejudice to the Claimant since, even if time were extended, the Tribunal would refuse her application under Rule 72(1) on the basis that there is no reasonable prospect of the Tribunal's original decision being varied or revoked. In reaching this conclusion, the Tribunal has had regard to the lengthy written submission made by the Claimant on 15 September. In those submissions, the Claimant goes beyond the grounds for her original application and makes wide-ranging challenges to many of the Tribunal's findings, amounting to an attempt to re-argue the whole of her case. The Tribunal can identify no grounds on which it would be in the interests of justice to allow that. The Claimant had her chance to argue her case at the Hearing. Instead, the Tribunal has concentrated on the grounds for the Claimant's original application. The Tribunal has also taken into account the Respondents' representations on the application and the Claimant's response to those representations dated 3 October.
10. The Claimant has asserted that the difference in wording between the two forms establishes that Mrs Day and Mr Webb both lied in their evidence to the Tribunal about the date of Mrs Day's knowledge of the Claimant's disclosure. From that, she says, the Tribunal should conclude that they had both falsified their evidence, perverted the course of justice and committed perjury. Because of that, she implies, the Tribunal should reject all of their evidence about why they acted as they did.
11. The Tribunal does not consider that there is any reasonable prospect of the Claimant establishing that the difference in wording between the two forms is evidence that Mrs Day and Mr Webb lied in their evidence to the Tribunal. The LADO referral, in whatever form, was completed by Mrs Murray. There is no reasonable prospect of the Claimant establishing that Mrs Murray, Mr Webb (who was copied in to disclosure A) or indeed anyone else in fact told Mrs Day about disclosure A at around the date the LADO referral form was completed, whichever version is referred to. There was no evidence before the Tribunal that Mrs Murray shared the contents of her LADO referral form with Mr Webb or Mrs Day, whatever that form said.
12. The Claimant alleges that the Respondents forged the version of the LADO form they submitted in evidence. She has not identified who she says was

responsible for that forgery. In their representations, the Respondents have confirmed that the SAR version of the LADO form was not in the First Respondent's possession at the time of the Hearing nor in the possession of the Second Respondent's legal department - although clearly it was in the possession of the Second Respondent as it was supplied by its own LADO.

13. The Tribunal accepts that there may have been a failure by the Second Respondent to comply fully with its obligation to disclose all relevant documents in its possession or under its control. In the Tribunal's experience, it is, regrettably, a common occurrence that all relevant documents are not disclosed, often because the right person has not been asked to check whether they have them, or because a person has overlooked a document they have for some innocent reason. The Second Respondent's failure to disclose the SAR version of the LADO form falls far short of proof that the Respondents or their legal representatives are guilty of forgery.
14. In their representations, the Respondents' representatives stated that neither the First Respondent nor the Respondents' legal representatives saw the SAR version until it was provided to them by the Claimant when she made her reconsideration application. They suggest that the SAR version was the first version of Mrs Murray's referral and that there was a second version, the one they supplied for the Hearing, which gave more detail of the concerns raised and the steps taken to deal with them. That is a potential explanation. On the other hand, the Claimant has confirmed that in responding to her subject access request the LADO supplied only the version of the form on which she now relies. In order to establish whether there is sufficient evidence to support the Claimant's serious allegation that the Respondents' version was a forgery, the Tribunal would need to hold a Hearing to hear evidence from, at the very least, Mrs Murray on whether she recalls submitting two versions of the referral form and the LADO on whether two versions might have been received but the second version overlooked in responding to the Claimant's SAR. The Tribunal considers that that it would not be productive or proportionate to take that step. The relevant events happened two years ago and witnesses' recollection of events is unlikely to be reliable. Further, Mrs Murray has now retired from the School's employment.
15. In any event, in relation to the Tribunal's decision on the detriment allegation, the Tribunal accepted that Mrs Day knew about the Claimant's first protected disclosure (disclosure A) by the time she committed the detriment of which she was accused, namely, reporting the Claimant to the police. The Tribunal accepted Mrs Day's evidence that her decision to contact the police was not affected in any way by the protected disclosure, of which she was aware, but was because of the Claimant's recent threatening behaviour. Even if the Tribunal had accepted that the SAR version of the LADO form was the only correct version, and that it had been shared with Mrs Day at the time, there is

no reasonable prospect that it would have reached a different conclusion on why she contacted the police.

16. In relation to the Tribunal's decision on the allegation of unfair dismissal, the Tribunal was satisfied that Mr Webb had a "significant amount of evidence before him" to support his conclusion that the Claimant's employment should be terminated because she had not reached the required standards during her probationary period. As the Tribunal recorded in its reasons, much of that behaviour, and documentary evidence to support it, predated the date of disclosure A. The decision to dismiss was taken by Mr Webb, not Mrs Day, so even if the Tribunal had accepted the SAR version of the LADO form as evidence that Mrs Day might have known about disclosure A before the Claimant was dismissed, there is no reasonable prospect that that would affect the Tribunal's conclusion that the principal reason for Mr Webb's decision to dismiss the Claimant was not that protected disclosure.
17. It is worth noting that at the Hearing the Claimant withdrew her allegation that Mrs Day subjected the Claimant to a detriment because of her protected disclosures by making complaints about her conduct to the School that eventually led to her dismissal. Further, in response to the Tribunal's express enquiry about the Claimant's position on the significance of Mrs Day's actions in relation to the decision to dismiss, the Claimant made no attempt to argue that the situation was analogous to that in Royal Mail Group Ltd v Jhuti [2019] UKSC 55 (where the Supreme Court concluded that if a person in the hierarchy of responsibility above the employee determines that she should be dismissed for a reason but hides it behind an invented reason which the decision-maker adopts, the reason for the dismissal is the hidden reason rather than the invented reason).

Conclusion

18. In summary, the Tribunal dismisses the Claimant's application because it was made outside the time limit and the Tribunal can identify no basis on which it would be in the interests of justice to extend that time limit.

Employment Judge Cox

Date: 10 October 2022

Judgment and Reasons sent to the parties on:

Date: 11 October 2022

For the Tribunal